

**(1971) 12 CAL CK 0013**  
**In the Calcutta High Court**  
**Case No : A.F.O.D. No. 798 of 1965**

State of West Bengal

APPELLANT

Vs

Secretary, Union Club, Purulia

RESPONDENT

**Date of Decision :** 09-12-1971

**Acts Referred:**

Land Acquisition Act, 1894 — Section 19(1), 23(1)

**Citation :** AIR 1972 Cal 225 : 76 CWN 296 : (1972) 2 ILR (Cal) 216

**Hon'ble Judges :** M.M. Dutt, J; A.K. Mukherjea, J

**Bench :** Division Bench

**Advocate :** S.C. Das Gupta, for the Appellant; B.C. Dutt and Shib Kumar Majumdar, for the Respondent

**Final Decision :** Dismissed

## Judgement

M.M. Dutt, J.—This appeal has been preferred by the State of West Bengal against the award dated August 24, 1964, of the learned District Judge. Purulia, u/s 18 of the Land Acquisition Act (hereinafter referred to as the Act).

2. The appellant State of West Bengal acquired 1.35 acres of land appertaining to certain plots belonging to the respondent, the Union Club of Purulia. The relevant notification u/s 4 of the Act was published on September 4, 1952 and the declaration u/s 6 of the Act was published long thereafter on February 2, 1961.

3. The Land Acquisition Collector classified the land as Bastu I land and Bastu II land. He valued the Bastu I land at Rs. 9,800/- per acre and the Bastu II land at Rs. 7,800/- per acre. On the basis of the said rates the Land Acquisition Collector made an award of Rupees 15,313.40 as compensation for the land acquired. Being aggrieved by the said award of the Collector, the respondent made an application for a reference to the District Judge u/s 18 of the Act.

4. Before the learned District Judge the respondent claimed compensation at the rate of Rs. 1,000/- per cotta. In support of their claim for compensation at the said rate, the respondent relied on certain sale deeds marked as Exhibits 4 to 4d.

The learned District Judge could not place reliance on these sale transactions excepting the transaction evidenced by Exhibit 4C which is a sale deed dated February 23, 1953. The appellant also filed certain sale deeds marked as Exhibits A to A(7). The learned District Judge, however, rejected all these documents relied on by the appellant. The learned District Judge came to the finding that there was no distinction between Bastu I land and Bastu II land as made by the Land Acquisition Collector. According to the learned District Judge the acquired land was Bastu I land and no portion of it was Bastu II land. After considering the evidence of the witnesses of the parties and relying on the sale deed Exhibit 4C, the learned District Judge came to the conclusion that the acquired land should be valued at the rate of Rs. 24,000/- per acre. Upon these findings, the learned District Judge awarded compensation to the respondent in respect of the acquired land at the rate of Rs. 24,000/- per acre plus the usual statutory allowance u/s 23(2) at the Act. Hence this appeal by the State of West Bengal.

5. The finding of the learned District Judge that the acquired land is Bastu I land, has not been challenged by Mr. Das Gupta, learned Advocate for the appellant. He, however, strenuously Urged that the sale deed Exhibit 4C being a post notification transaction should not be relied on in determining the market value of the acquired land. It was submitted by Mr. Das Gupta that under no circumstance a post notification transaction could be a proper indicia for ascertaining the market value of the land. We are, however, unable to accept the said contention of Mr. Das Gupta. u/s 23(1), the Court has to determine the market value of the land. One of the methods of valuation is the price paid, within a reasonable time, in bona fide transactions of purchase of land acquired, or of the land adjacent to the land acquired having similar advantages. Such transactions of sale indicate the price of the land acquired on the date of the notification. The Court has to consider whether or not any particular transaction of sale affords a fair criterion of the market value of the land acquired. There is no rule that a Post notification transaction of sale of land similar to the acquired land cannot be looked into. If in considering a post notification sale, the Court finds that after the publication of the notification the price of the lands in the locality has been affected, in that case, it will not be proper for the Court to rely on such a transaction of sale, for it will not be of any guide for the determination of the market value of the acquired land.

6. Whether the notification has affected the price of the land in the neighbourhood of the acquired land or not cannot be assumed by the Court, but has to be determined on facts proved in the case. The onus to prove such facts is on the party who objects to any such transaction of sale being relied on by the Court for ascertaining the market value of the acquired land. The view, which we take finds support from the decision in Govt. of Bombay v. Karim Tar Mahomed. (1909) ILR 33 Bom 325 It has been held in that decision that sales after the date of notification must be discarded when it has been proved that the values have been affected one way or the other by circumstances which have arisen after that date. A Division Bench of the Mysore High Court in M. S. Nanjappa v. Special

Land Acquisition Officer AIR 1966 Mys 66 has taken the same view. It has been held in that case that bona fide sale transaction cannot be excluded from consideration merely on the ground that it was entered into subsequent to the date of the notification. Further, it has been held that in taking into consideration a subsequent transaction, enhanced values attributable to the very acquisition or to a general increase in the market price should not be overlooked by the Court.

7. There is no evidence in the present case before us that after the publication of the notification u/s 4, the land value was affected one way or the other. In the absence of any evidence showing that the value of land in the locality of the acquired land was affected after the publication of the notification u/s 4, the post notification transaction of sale by the sale deed Exhibit 4C cannot be excluded from consideration in the matter of determining the market value of the acquired land.

8. It appears from Exhibit 4C that a parcel of Bastu 1 land was sold at the rate of Rs. 24,000/- per acre. The land sold is situate very near to the land acquired and it is similar to the acquired land. The learned District Judge was justified in relying upon this transaction of sale.

9. The respondent relied on an estimate of valuation made by a Government value at the instance of the appellant, for the purpose of showing that the market-price of the acquired land was much more than what the Collector had awarded. It appears from the estimate (Exhibit 5) that the acquired land was valued at the rate of Rs. 12,000/- per acre. The estimate on the face of it shows that the Collector's valuation is wrong.

10. It has been already stated that the learned District Judge refused to rely on the sale deeds filed by the appellant. Out of these sale deeds Mr. Das Gupta relied on three of them. Exhibit A is dated February 8, 1952, and it shows 3 cottas of home-stead land was sold at Rs. 199/- only, that is, at the rate of Rs. 3,978/- per acre. Bibhuti Bhusan Dhole, who is the Secretary of the Purulia Union Club, says in his evidence that the land sold by the document (Exhibit A) is low land and there is paddy land adjacent to the same. It appears from the schedule of Exhibit A that the northern and southern boundary of the land sold has been described therein as "Landlord's Khas land." This description supports the evidence of this witness. Moreover, the witness was not cross-examined on the point on behalf of the appellant. In our view, this particular sale cannot be said to be a comparable sale and the learned District Judge was right in rejecting the same.

11. Exhibit A (2) is dated June 27, 1952, and Exhibit A (4) is dated March 16, 1951. By Exhibit A (2), a dwelling house appertaining to 2 cottas of land was sold at Rs. 49/- only and by Exhibit A (4) also another dwelling house standing on 1 cotta of land was sold at Rs. 100/- only. It is inconceivable that even in 1952, dwelling house standing on 1 cotta or 2 cottas of land in the town of Purulia could be sold either at Rs. 100/- or at Rs. 49/-. It is not known under what

circumstances the same were sold at such a low price. Moreover, in neither of the documents the house and the land have been valued separately. The learned District Judge was perfectly justified in not placing any reliance on these two documents.

12. For another reason, the sale deeds Exhibits A, A (2) and A (4) cannot be relied on. It does not appear that the Collector in determining the compensation of the acquired land made any enquiry in ascertaining the market value of land on the date of the notification nor does it appear that the Collector relied on any of the sale deeds filed by the appellant. Even, assuming that the Collector made some enquiry as to the market value of the land at or near about the date of notification u/s 4, it is apparent from the price of the acquired land assessed by the Collector, that the Collector did not rely on the sale deeds Exhibits A, A (2) and A (4). Mr. Dutt, learned Advocate appearing on behalf of the respondent relied on a Bench decision of this Court in Charu Prokash Ghosh Vs. State of West Bengal, which to some extent lends support to the contention that the transactions of sale which were not relied upon by the Collector could not be relied on by the State in a reference u/s 18 for the enhancement of the valuation. The Andhra Pradesh High Court in The Sub-Collector, Ongole Vs. Yerra Anumanchamma, , also refused to rely on a sale transaction on the ground that the officer who passed the award had not considered that as relevant in awarding the market value. In our opinion, when the Collector who acts as the agent of the Government in assessing the market value of the acquired land, has not relied on particular sale transactions it will not be open for the Government to rely on such transactions. In the instant case, the Collector did not place reliance on the sale deeds Exhibits A to A (7). The same cannot, therefore, be considered in determining the market value of the acquired land. In any event, the sale deeds relied on by Mr. Das Gupta, namely. Exhibits A, A (2) & A (4) cannot be said to be comparable sales.

13. Lastly, it was argued by Mr. Das Gupta that the onus lay on the respondent to prove that the Collector's valuation was erroneous and inadequate. There cannot be any doubt that the valuation made by the Collector is insufficient or inadequate must prove the same (sic). It has, however, been held by a Bench of this Court in Fink v. Secy. of State for India (1907) ILR 34 Cal 599 that when the Collector makes no enquiry or gives no ground for his valuation, the burden of proof on the claimant is nominal. In this connection, we may refer to Clause (d) of Section 19(1) of the Act which provides that in making the reference, the Collector shall state for the information of the Court, in writing under his hand the grounds on which the amount of compensation was determined when the objection is to the amount of the compensation. In his statement, the, Collector has only stated the rates of Bastu I land and Bastu II land. He has not disclosed the basis for the said rates of valuation. In our view, the Collector has not complied with the provision of Clause (d) of Section 19(1). Where the Collector discloses the basis for his valuation, the Court is in a position to consider the same with reference to the evidence adduced by the referring claimant in

discharging the onus that lies on him. Omission by the Collector to state the grounds on which the amount of compensation was determined prevents the Court from such consideration and consequently, the onus of the referring claimant becomes negligible. In such a case only slight evidence adduced by the referring claimant will discharge the onus. Most respectfully we agree with the principle laid down by this Court in Fink's case referred to above. We have already stated that the Collector has not, in his statement u/s 19, disclosed the ground of his valuation. There is no evidence from which the basis for the Collector's valuation can be ascertained. For the reasons aforesaid, the onus of the respondent is negligible and only slight evidence would discharge the said onus. In our opinion the respondent has been able to discharge their onus that the Collector's valuation was inadequate.

14. The learned District Judge was right in not accepting the claim of the respondent that the acquired land should be valued at the rate of Rs. 1,000/- per cotta or Rs. 60,000/- per acre. At the same time, the learned District Judge could not accept the valuation made by the Collector and after considering the evidence adduced on behalf of the parties, the learned District Judge fixed the market value of the acquired land at the rate of Rs. 24,000/-per acre. We have ourselves considered the materials on record and we also come to the same conclusion as that of the learned District Judge, that the market value of the land should be at the rate of Rs. 24,000/- per acre.

15. In the result, the judgment and award of the learned District Judge are affirmed and the appeal is dismissed. In view of the facts and circumstances of the case we do not make any order for costs in this appeal.

Arun K. Mukherjea, J.

16. I agree.